1945-46

File No. B. University 45-46

Legal Department

B BRANCH

Subject:—

A Bill to amend the Bombay University Act, 1928 and the Bombay University (Amendment) Act, 1944

7/1945

File No. B University /45—46

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Office of the R.L.A.

The proposed amendments of section 17, and of sub-section (1) of section 39 inserting a new clause (i), of the Bombay University Act, 1928, are legally necessary.

2. The amendment proposed in section 39(2) (a) and in section 42(3) to authorise more than one competent person to make an inquiry or inspection is not strictly necessary in view of the provision made in section 13 (b) of the Bombay General Clauses Act, 1904. However, the proposed amendment is legally expedient in view of the wording of sections5 and 41(2) of the Bombay University Act, 1928.

3. With regard to the other amendment proposed in section 39(2)(a), an inquiry thereunder is not restricted to the matters mentioned in sub-section (1). However there is not objection to provide specifically that the inquiry may be into those matters and such other matters as may be deemed necessary and relevant. The amendment is therefore legally expedient.

4. R.L.A. has already advised that the language of section 42(1) is clear and unambiguous (vide paragraph 4 of R.L.A.'s opinion No. 2487 dated the 1st April 1944) a copy of which has been forwarded to Educational Department under R.L.A's No. 2677 dated the 8th April 1944. The proposed amendment is however legally expedient to indicate the grounds on which the rights conferred on a college by affiliation may be withdrawn.

5. The proposed amendment of section 13 is already covered by paragraph 4 (last sentence)of R.L.A's opinion No. 54-Confl. Dated the 8th February 1945, where the R.L.A. advised that the amendment of the Act is inescapable in view of the stand taken by the Chief Justice.

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6 The proposed amendment of section 4 of the Bombay University (Amendment) Act, 1944 (Bom. XI of 1944), is legally necessary to enable the Vice-Chancellor to curtail the term of office of any member of an authority of the University who held office within twelve months after the date on which that Act came into force.

Sd/- P.N.M.
5/5/45.

Remembrancer of Legal Affairs.

U.R. to Educational Department, No. 3558, dated the 5th May 1945.

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A revised draft Bill is sent herewith.

2. In view of the amendment of section 17, it seems hardly necessary to amend section 13(1) regarding the Chief Justice of Bombay. The difficulty and embarrassment felt by the present Chief Justice in his capacity as ex- officio Fellow would be obviated by the proposed amendment of section 17. Section 13 has been amended on the lines indicated by A(E) on page 45. E.D. might however consider whether the amendment of that section is at all necessary now in a view of the proposed amendment of section 17. If considered necessary, E.D. might concult the Chief Justice again on the point.

3. Clause 3. - It is not necessary to substitute the whole section by a new section. The substitution of relevant portions is enough to carry out the object.

There is no point in changing "Official Gazette" to "Bombay Government Gazette". The expression "Official Gazette" has been substituted for "Bombay Government Gazette" by paragraph 4(1) of the original Adaptation Order, 1937.

4. The Statement at pages 31-34 ante, as amended, is in order.

5. The subject-matter of the Bill falls under entry No. 17 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935. Since the Bill does not relate to any entry in the Concurrent Legislative List, it is not necessary to reserve it for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935, or paragraph (2) of the Proclamation. Under executive instructions, the Bill requires the previous concurrence of the Governor General.

'd/- P.N.M.
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Remembrancer of Legal Affairs.

4Ca/M.V.V./16.7 U.R. to E.D. No. 6844, dated the 18th September 1945.

The Chief Justice of Bombay is an ex-officio Fellow of the University of Bombay under section 13 of the Bombay University Act, 1928. Disputes and incidents arising out of the administration of the University are liable to result in proceedings in the High Court. A High Court Judge who is elected or nominated a Fellow can resign but the Chief Justice of the High Court is precluded from doing so as he is an ex-officio Fellow . It is therefore proposed to provide that the Chief Justice shall be a Fellow provided that the incumbent of the office of the Chief Justice signifies in writing his acceptance of the office of Fellow.

2. Section 17 of the Act as it stands at present, enable the Provincial Government on the recommendation of the Senate supported by at least two-thirds of the whole number of Fellows, to cancel the appointment of any person appointed or elected a Fellow of the University. These provisions make it practically impossible to remove an offending Fellow from the University Senate. Motions for the cancellation of the appointment of certain Fellows of the Senate have recently failed because the necessary majority could not be obtained. The University has therefore recommended that the section may be amended so as to enable the Chancellor to remove a Fellow on the recommendation of two-thirds of the Fellows present at Senate meeting instead of two-thirds of the whole number of Fellows. It is proposed to amend section 17 accordingly.

3. Under the provisions of section 39(1) of the Act, as it stands at pr it, it is not necessary for the University, in recommending to Government a college for affiliation, to examine the question with reference to the needs of the locality where the College is proposed to be started. In order to prevent the starting of new colleges which are superfluous to the needs of the locality, it is considered necessary that the

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question whether a locality really needs a College should be carefully examined before affiliation is granted. It is therefore proposed to amend the section so as to require the University to investigate whether the establishment of a College in any locality is really necessary before it recommends the colleges for affiliation.

4. An amendment to section 39(2)(a) of the Act is proposed in order to make it clear that the Syndicate may appoint more than one person on the Local Inquiry Committees in connection with the affiliation of colleges and that such committees may report not only on matters mentioned in section 39(1) but also on other matters which may be deemed necessary and relevant for deciding the question of affiliation of any college.

5. Sub-section (1) of section 42 of the Act provides that a member of the Syndicate who intends to move that the rights conferred on any college by affiliation be withdrawn in whole or in part, or modified, shall give notice of his motion and shall state in writing the grounds on which the motion is made. The grounds for disaffiliation under this section need not be confined to breach of the conditions specified in section 39. In order to make this intention clear it is proposed to amend section 42(1). The amendment to section 42(3) is intended to make it clear that the Syndicate may _____rise more than one person to conduct the inspection of College proposed to be disaffiliated.

6. Section 4 of the Bombay University (Amendment) Act, 1944, confers on the Vice-Chancellor the power to fix a date for the termination of the office of every Fellow, other than the Fellows elected by the Bombay Legislative Assembly and every member of any authority of the University holding office on the date on which the

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....amending Act came into force, i.e. on the 5th August 1944. This transitory provision was intended to restore the disarranged timings of the various elections to the several University authorities to the order which would have obtained if the amendments made by the 1944 Act had been in operation since the inception of the Bombay University Act, 1928. This amending Act has enabled the elections to all University authorities, except the Syndicate and the Academic Council, to be restored to the time-table as contemplated in the original Act. There are however still a few members of the Syndicate and the Academic Council in whose case the Vice-Chancellor cannot appoint dates for the termination of their offices, as they were not members of the authorities concerned on the date on which the amending Act came into force i.e. on the 5th August 1944. In order that all elections to the University authorities may be restored to the original time-table it is proposed to authorised the Vice-Chancellor to appoint dates for the termination of office also in the case of members holding office within twelve months after the 5th August 1944.

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The object in view can be achieved by substituting the following for clause 2 of the draft Bill at p.50 ante:-

Amendment of section 13 of Bom.IV of 1928.

"2. In sub-section(1) of section 13 of the Bombay ..University Act, 1928, hereinafter called the said Act, under the heading "I Ex-officio" below the entry "(C) All Heads of University Departments," the following proviso shall be inserted, namely:-

> ' Provided that any incumbent of the office of the Chief Justice of Bombay may, by letter addressed to the Chancellor, resign his office of Fellow and on the acceptance of the resignation the office of Fellow so far as concerns the said incumbent shall become vacant.' "

The proviso now suggested would fully meet the objection taken by the Secretary to the Governor-General (Public) and avoid the need for a letter of acceptance of Fellowship from every incumbent of the office of Chief Justice. E.D. is requested to consider whether the revised draft clause is suitable. If E.D. agrees the first paragraph of the statement will have to be suitably modified.

Id/- P.N.M.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 794, dated the 29th January 1946.

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The following revised draft of clause 2 of the draft Bill will I think meet the Chief Justice's objections:-

Amendment of section 13 of Bom. IV of 1928.

"2. In sub-section (1) of section 13 of the Bombay University Act, 1928, hereinafter called the said Act, under the heading "I Ex-officio" after the words "The Chief Justice of Bombay" the following shall be inserted, namely:-

"Provided that the incumbent of that offic by letter addressed to the Chancellor, signifies his acceptance of the office of Fellow and may likewise at any time thereafter withdraw therefrom."

The only other alternative is to exclude the Chief Justice of Bombay from the Ex-officio group and relegate him to the Nominated group in clause (B) under the heading "II Ordinary" in section 13. In that case the number of nominated Fellows may if necessary be increased from 40 to 41.

Paragraph 1 of the Statement may be amended as shown in the accompanying draft. The E.D. should renumber the clauses of the Bill and paragraphs of the Statement in view of the proposed insertion of the amendment of section 13.

Sd/- P.N.M.
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Remembrancer of Legal Affairs.

U.R. to E.D.No. 1750, dated the 1st March 1946.

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